

AMENDMENTS TO THE DRAWINGS

The Attached sheet of drawings includes changes to Fig. 5A, 5B, 6 and 7. The Figures have been amended as set forth in the remarks which follow. The formal drawings on the replacement drawing sheets submitted herewith replace the originally filed drawings.

REMARKS

Objections to Drawings

In the Office Action, the figures are objected to because proper cross hatching for plastic is not shown. Submitted herewith are corrected Figures 6 and 7 showing proper cross hatching. Applicants submit that the rejection is thus rendered moot.

The Office Action also objects to the drawings, stating that the ribs below the vacuum panel as claimed in claims 5, 13 and 17 are not shown. Submitted herewith is a new Figure 5B, illustrating an embodiment of the invention having a rib below the vacuum panel as supported by those claims, which form part of the specification as filed.

The Office Action also objects to the drawings for containing descriptive matter. Descriptive matter has been removed in the replacement drawings submitted herewith.

Objections to Specification

The Office Action objects to the disclosure for reciting dimensions in the disclosure that differ from those of the drawings. The application has been reviewed and Applicants have determined that the invention can be manufactured with either the dimensions identified in the disclosure, or the dimensions illustrated in the Figures as originally filed. Thus, the specification is being amended to include either dimension and the objection is rendered moot.

Rejections under 35 U.S.C. § 112

The Office Action rejects claims 2, 4, 6, 12, 14, 16 and 18 under 35 U.S.C. § 112, second paragraph as indefinite because, according to the Office Action, “there aren’t any vacuum panels set forth in the adjacent sidewall.” Applicants respectfully traverse, but have amended the claims to advance prosecution.

Claim 1 recites:

A thin-walled, plastic container having a body portion, said body portion having generally rectangular sidewalls and a base wherein said body portion comprises a label mounting area, *on at least two of the adjacent rectangular sidewalls*, extending between an upper label bumper and a lower label bumper, said label mounting area comprising:

a substantially generally rectangular vacuum panel having an upper and lower edge on one sidewall, and

a plurality of ribs positioned in the label area on the sidewall adjacent to the side wall containing the vacuum panel, said ribs having either an outward or inwardly facing rounded edges, relative to the interior of the container, wherein said ribs are parallel to each other.

(emphasis added). Claim 2 (prior to amendment) recites:

The plastic container of claim 1, wherein the adjacent sidewall is symmetrical to an opposing side wall relative to rib and vacuum panel placement, size and number.

Claims 4, 6, 12, 14, 16 and 18 contain a similar recital. As originally drafted, the recitation of “the adjacent sidewall” refers to the sidewall containing the vacuum panel and/or the sidewall adjacent to the side wall containing the vacuum panel. Thus it would be clear to persons reading the claims that the limitation requiring that “the adjacent sidewall is symmetrical to an opposing side wall relative to rib and vacuum panel placement, size and number” in claims 2, 4, 6, 12, 14, 16 and 18 requires that a sidewall opposite one of the adjacent sidewalls, whether the one of the adjacent sidewall is the vacuum panel containing sidewall or the sidewall adjacent to the side wall containing the vacuum panel, are symmetrical. This is clear without amendment. However, to advance prosecution, claims 2, 4, 6, 12, 14, 16 and 18 have been amended to recite that “at least one of said adjacent sidewalls is symmetrical to an opposing side wall relative to rib and vacuum panel placement, size and number.” Applicants submit that, because this amendment does not change the meaning of the claims in any way, the amendment does not narrow the scope of the claims.

The Office Action rejects claim 5 under 35 U.S.C. § 112, second paragraph as indefinite alleging that the “or” expressions render the claim vague and alternative. Applicants respectfully traverse.

Claim 5 recites:

The plastic container of claim 1, wherein the sidewall containing the vacuum panel has one or a plurality of ribs above or below the vacuum panel.

Thus, claim 5 allows for at least one rib and that the rib (or ribs) can be located either above or below the vacuum panel. Applicants submit that this meaning of claim 5 is clear and that the claim is not vague. Applicants further note that Office procedure provides that use of the word

“or” is acceptable. (MPEP § 2173.05(h)). Accordingly, Applicants request that the rejection be withdrawn.

Rejections under 35 U.S.C. § 103(a)

The Office Action rejects claims 1, 2 and 5-14 under 35 U.S.C. § 103(a) as obvious in view of U.S. Patent No. 5,472,105 to Krishnakumar et al. in view of U.S. Patent No. 5,758,790 to Ewing Jr. According to the Office Action, Krishnakumar et al. teach a hot fill container with a pair of label panels having ribs and a pair of generally rectangular vacuum panels with grips in the label area. The Office Action further asserts that Ewing Jr. teaches a container where label panels and grips are located in rectangular sidewalls. Further, the Office Action asserts that it would be obvious to form the container of Krishnakumar et al. with the rectangular sidewalls of Ewing Jr. Applicants respectfully traverse.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). These criteria are not satisfied by the references set forth in the Office Action.

First, there is no motivation for a person of ordinary skill in the art to combine the disclosures of Krishnakumar et al. and Ewing Jr. in order to arrive at the present invention, nor to have a reasonable likelihood of success if combined. Krishnakumar et al. is specifically directed to problems associated with round containers. For example, Krishnakumar et al. states that it is directed to solving the problem of ovalization in containers (col. 2, lines 25-27). Ovalization is identified as a problem that occurs when a cylindrical container undergoes a transformation to become oval (col. 2, lines 12-15). The disclosure of Krishnakumar et al. is clearly directed to a substantially cylindrical package. (See, e.g., col. 4, line 10). Nowhere does Krishnakumar et al.

suggest any variability from this cylindrical shape to form a rectangular container as asserted in the Office Action. Conversely, Ewing Jr. is directed to a rectangular (or square) container. Ewing Jr. is particularly concerned with providing a container with multiple gripping sections to make a more easily grippable container and Ewing Jr. contains no suggestion to incorporate features from a round or cylindrical container into a rectangular container to solve the problems in the art or for any other purpose. Clearly, the disclosure of Ewing Jr. is limited to rectangular or square containers and not a round or cylindrical container. For at least this reason, there is no motivation to combine Krishnakumar et al. and Ewing Jr. Therefore, the Office Action fails to present a *prima facie* case of obviousness.

Second, Applicants note that the problems of manufacturing a rectangular container as in the present invention are different from those of a round container. The dissymmetry inherent in a rectangular container creates manufacturing difficulties due to differences in the distance that softened plastic material must flow during the blow molding process. (See paragraph 35 of the present disclosure.) These difficulties result in different concerns of material flow that must be accounted for in container design and would be readily identified as such by persons skilled in the art. Thus, there is no motivation in general to incorporate principles used in the manufacture and design of round containers into the design of a rectangular container. To the extent any motivation may be present, it would at best amount to a the modification being obvious to try, but would not result in a reasonable expectation of success; obvious to try does not rise to the level of sustaining a *prima facie* case of obviousness. (see MPEP § 2145 and cases therein) For this reason as well, the Office Action fails to present a *prima facie* case of obviousness.

Third, the combination of Krishnakumar et al. and Ewing Jr. does not teach the limitations of the present invention. For example, present claim 1 requires a vacuum panel in a sidewall. The Office Action asserts that Krishnakumar et al. discloses a pair of generally rectangular vacuum panels with grips. However, the vacuum panel of Krishnakumar et al. is not limited to the rectangular region of the grip. The vacuum panels (32) also include the walls (32A, 32B) surrounding the rectangular region and located between the rectangular portion of the grip (or bottom recess 36) and the container sidewall. Further, as best seen in Figure 5, the rectangular portion (36) does not flex, as would a vacuum panel, but remains rigid as the entire vacuum panel

region 32 flexes inwardly. Thus, in contrast to the assertion in the Office Action, Krishnakumar et al. does not disclose “a substantially generally rectangular vacuum panel,” as required by claim 1 of the present invention, but discloses a rectangular region as part of a vacuum panel.

The disclosure of Ewing adds nothing to overcome these deficiencies of Krishnakumar et al. In fact, the ribs of Ewing Jr. are not in the sidewall adjacent the sidewall containing the vacuum panels. Rather, the ribs of Ewing Jr. extend around this adjacent sidewall into the sidewall containing the grip region. Thus, the combination of Krishnakumar and Ewing Jr. fails to teach the all of the limitations of the present invention and therefore, for this reason as well, the Office Action fails to present a *prima facie* case of obviousness.

For at least the reasons stated above, taken both individually and collectively, Applicants submit that the Office Action fails to present a *prima facie* case of obviousness over Krishnakumar et al. in view of Ewing Jr. and, therefore, the rejection should be withdrawn.

The Office Action also rejects claims 1, 2, 5-10 and 15-18 under 35 U.S.C. § 103(a) as obvious in view of U.S. Patent No. 5,222,615 to Ota et al. in view of Ewing Jr. Applicants respectfully traverse.

First, the combination of Ota et al. and Ewing Jr. does not disclose the limitation of the present invention. Ota et al. does not disclose panels containing ribs. The ribs that are present in Ewing Jr. are not in the sidewall adjacent the sidewall containing the vacuum panels. Rather, the ribs of Ewing Jr. extend around this adjacent sidewall into the sidewall containing the grip region. Therefore, there is not “a plurality of ribs positioned in the label area on the sidewall adjacent to the side wall containing the vacuum panel” as required by the present application.

Second, there is no motivation to combine the teachings of Ota et al. and Ewing Jr. Ewing Jr. concerns providing a grip configuration with improved resistance to pressure changes, increased mechanical strength and easier gripping and gasping. These objects are achieved by providing a large ribbed region and a recessed grip region, as described above. Ota et al. is concerned primarily with providing an improved base in a hot fill container. The presence of vacuum (or collapse) panels in Ota et al. is designed to accommodate a controlled volume change. Ota et al. is silent as to the use of reinforcing ribs to strengthen a sidewall (as in Ewing Jr.) and Ewing Jr. is silent as to

adding any structure for the controlled accommodation of vacuum changes. Thus, there is no motivation to combine these references.

For at least these reasons, Applicants submit that the Office Action fails to present a *prima facie* case of obviousness over Ota et al. in view of Ewing Jr. and, therefore, the rejection should be withdrawn.

The Office Action also rejects claims 3 and 4 under 35 U.S.C. § 103(a) as obvious over the references as applied above with respect to claim 1 in view of U.S. Patent No. 3,537,498 to St. Amand. As stated above, the references applied to claim 1 fail to establish a *prima facie* case of obviousness. St. Amand adds nothing to the references applied to claim 1 that would overcome the deficiencies described above to establish a *prima facie* case of obviousness. Accordingly, Applicants submit that the rejection should be withdrawn.

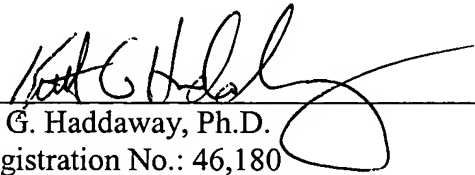
CONCLUSION

It is believed that a full and complete reply to the office action has been made and thus Applicants respectfully request that prosecution proceed. Applicants submit that the claims 1-18 are in condition for allowance and request that the Examiner so indicate and issue a notice of allowability and that the application be passed to issue. Should the Examiner have any questions which might be amenable to a telephone interview, the Examiner is invited to contact undersigned counsel to discuss such issues.

If any additional fee is required in conjunction with this response, the Commissioner is authorized to charge our deposit account No. 22-0261, and notify undersigned counsel accordingly.

Dated: April 25, 2005

Respectfully submitted,

By 
Keith G. Haddaway, Ph.D.
Registration No.: 46,180

James R. Burdett

Registration No.: 31,594

VENABLE LLP

P.O. Box 34385

Washington, DC 20043-9998

(202) 344-4000

(202) 344-8300 (Fax)

Attorney/Agent For Applicant

DC2#642013



Appl. No. 10/727,042
 Amdt. Dated April 25, 2005
 Reply to Office Action of Oct. 25, 2004
 Annotated Sheet Showing Changes

changes: Numbers
 formalized

